



Office of Governmental Affairs
P.O. Box 942720
Sacramento, CA 94229-2720
Telecommunications Device for the Deaf - (916) 795-3240
(916) 795-3689, FAX (916) 795-3270

May 13, 2008

AGENDA ITEM 3a

TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

I. **SUBJECT:** AB 2023 (Houston)—As Amended April 3, 2008

Disability Retirement Determinations

II. **PROGRAM:** Legislation

III. **RECOMMENDATION:** Support, if amended

This bill would attempt to eliminate the use of the disability retirement process in lieu of the disciplinary process. It should be amended to address concerns regarding its limits on non-medical information and also amended to apply to all California public retirement systems.

IV. **ANALYSIS:**

This bill would require the granting of disability retirement benefits to CalPERS members be based solely on medical information, and expressly prohibits using personnel, disciplinary, or other ancillary considerations as the basis for granting these benefits. This proposal is the result of recommendation 27 from the Governor's Public Employee Post-Employment Benefits Commission (Commission) to strengthen governance and increase transparency and accountability.

Background

CalPERS Disability Retirement Determination Process

A CalPERS member unable to perform his or her usual job duties because of an illness or injury which is expected to be permanent or to last for an extended or uncertain duration may be eligible to receive a monthly allowance for the rest of his or her life or until his or her recovery. The disability does not have to be related to work. The CalPERS Board of Administration makes disability retirement determinations for all state, school, and public agency members,

except for local safety members, and also makes determinations as to whether disabilities are the result of a job-related injury or illness. The determinations are currently based on “competent medical opinion” as defined in case law, and include all information necessary for the physician to render an informed opinion on the member’s medical condition.

Local public agencies within CalPERS have the responsibility for making disability retirement determinations for their own local safety members, as well as for deciding the disability is the result of a job-related injury or illness. The determination on a disability or industrial disability retirement application of a public agency local safety member is made by the governing body of the contracting agency and submitted by “resolution” to CalPERS. However, the member still submits his or her application to CalPERS and is still subject to the same laws regarding application, amount of benefits, and eligibility. When CalPERS receives the member’s application, it notifies the member’s employer, and the governing body for that contracting agency will determine whether the member is substantially incapacitated from performing his or her usual job duties. For applications for industrial disability retirement, the employer will also determine if the disability is industrial. The employer may take up to six months to make the determination after being notified by CalPERS. If it is determined that the member is not disabled, he or she may appeal the decision to the governing body of the contracting agency that made the determination – not CalPERS.

Public Employee Post-Employment Benefits Commission

Governor Schwarzenegger created a 12-member panel to identify financial liabilities that California’s public agencies and school systems face in paying pension and health care benefits for retiring employees. On January 7, 2008 the Commission issued its comprehensive report containing 34 recommendations divided into 8 groups that addressed the unfunded pension and retiree health care liabilities for California state and local governments.

Proposed Changes

Assembly Bill 2023 requires that the granting of disability retirement benefits to CalPERS members be based solely on medical information, and expressly prohibits considering personnel, disciplinary, or other ancillary information in the determination process.

Legislative History

- 2006 Chapter 118 (AB 2244, PERSS) - Among other things, reestablishes the state of the law related to disability retirement as it was historically administered and applied by CalPERS by clarifying that a member would be eligible for disability retirement provided he or she could show substantial incapacity to perform his or her usual duties with his or her current employer.

- 1991 Chapter 1159 (AB 2168, Gotch) - Requires that, in the event of a dispute involving the issue of a local safety member's eligibility for disability retirement, the hearing shall be conducted by an administrative judge of the Office of Administrative Hearings.
- 1976 Chapter 655 (AB 1636, Z'berg) - Among other things, prescribes procedures for application for disability retirement for local safety members and determination of disability for such members by the governing body of the local employer of the member. Also prescribes procedures for reinstatement from disability retirement for a local safety member upon determination by the governing body. Provides jurisdiction of Workers' Compensation Appeals Board to determine whether disability of local safety member is industrial where claim of member is disputed by the governing body of his or her employer.

Issues

1. Arguments by Those in Support

According to the author, "there have been considerable, significant differences in standards between public employers as to what constitutes a "disability," with some local agencies granting disability retirement in cases considered at a minimum, questionable."

Organizations in support: The Howard Jarvis Taxpayer's Association

2. Arguments by Those in Opposition

There is no known opposition at this time.

3. Commission's Rationale for Recommendation 27

According to the Commission Report, each of the retirement boards within the different retirement systems have the responsibility to make disability determinations for its members. Consequently there can be, and has been, significant differences in standards between employers as to what constitutes a "disability," with some local agencies at times using disability retirement as a substitute for the disciplinary process. This recommendation is made in order to protect the credibility of the disability claims process.

4. This Bill Only Applies to CalPERS

According to the author, the intent was to create a requirement that applies to all California public retirement systems. This is in line with the Commission's recommendation and rationale, which focuses on creating uniformity. However, the bill, as currently written, only applies to CalPERS. While the intent is laudable, this intent will be most effective if it is expanded to cover all

public retirement systems. In light of this, staff recommends that the bill's scope be expanded.

5. Unintended Consequences

While staff agrees with the intent of the bill, there are unintended consequences. Disability retirement approval is, and should be, based solely on the ability of the member to perform his or her usual job duties. However, in some cases, there are documents or information that, while not medical in nature, have a direct bearing in establishing the validity of the member's medical condition. Disallowing such information may actually lead to the erroneous approval or denial of some disability retirement applications. Therefore, staff recommends that the bill be amended in a way that allows for the legitimate use of pertinent non-medical information.

6. Legislative Policy Standards

CalPERS' Legislative Policy Standards suggest a support position for proposals, "which provide remedies for inequitable, unfair, or discriminatory benefits." AB 2023 addresses the perception of inequity within the disability retirement process. However, as currently written, it creates, "an unreasonable cost or complexity" by creating a situation in which program staff would be required to withhold necessary information from physicians. Therefore, staff recommends a support if amended position.

V. STRATEGIC PLAN:

This item is not a specific product of the Annual or Strategic Plans, but is a part of the regular and ongoing workload of the Office of Governmental Affairs.

VI. RESULTS/COSTS:

The bill's potential costs will be largely determined by future amendments. Therefore, anticipated results could vary from slight savings to significant additional administrative costs.

Program Cost

None identified. No changes in program cost should result. However, to the extent that some employers may not be conforming to current standards, unanticipated cost savings may occur.

Administrative Costs

Unknown at this time. In current form, this bill would make sweeping changes to the disability determination process. In this case, significant program costs can be anticipated.

Wendy Notsinneh, Chief
Office of Governmental Affairs

Gloria Moore Andrews
Deputy Executive Officer - Operations

Kathie Vaughn
Assistant Executive Officer
Member and Benefit Services Branch